

MINUTES
Texas Board of Health Meeting
October 18, 2002

The October 18, 2002, meeting of the Texas Board of Health (Board) was called to order at 8:00 a.m., at the Texas Department of Health (department), 1100 West 49th Street, Room M-739, Austin, Texas, George H. McCleskey, Vice-Chair presided. A quorum was present with members, Raymond Hannigan, Margo Scholin, B.S.N., M.S., J.D., and Amanullah Khan, M.D., Ph.D., in attendance.

Registered Guests

Lillie Gilligan, Glaxo Smith/Kline
Gayle Harris, Texas Medical Association
Tina Cambere, Merck Vaccine Division
Kathy Thomas, Board of Nurse Examiners
K. Lynn Wieck, Texas Nurses Association
Claire B. Jordan, Texas Nurses Association
David Kinsey, Health and Human Services Commission
Carolyn Parker, Texas AIDS Network
Jessie Yoas, Representing Nursing
Marsha B. Earley, Representing Amy Earley
Jerri Fields
Sandy Bartlett, AIDS Services of Austin
Skip Rosenthal, International AIDS Empowerment, El Paso
Tracy Wilson, Houston Title I/Thomas Street Clinic
Paul J. Mayfield, ACT Now
Carlos Hernandez, ACT Now
Ray Moore, ACT Now, ADAD
Steven Kindrich, ACT Now
Carlos Hernandez, ACT Now
James B. Oliver, ACT Now
Larry Diaz, ACT Now
Regina Martin, Legislative Budget Board
Heidi Lopez-Cepero, Governor's Office of Budget and Planning
Ernie Schmid, Texas Hospital Association
Erin Florence Jones, OZ Systems

Mr. McCleskey welcomed guests. Also in attendance at the meeting were Eduardo J. Sanchez, M.D., M.P.H., Commissioner of Health, and other key staff members of TDH.

The Texas Board of Health entered into Executive Session concerning the annual performance

evaluation of the Commissioner of Health at 8:01 a.m. and concluded at 8:47 a.m. No action was taken.

Mr. McCleskey reconvened the meeting at 9:03 a.m., on Friday, October 18, 2002. Other Board members in attendance were Mr. Raymond Hannigan, Ms. Margo Scholin and Dr. Amanullah Khan.

ON A MOTION MADE BY MR. MCCLESKEY AND SECONDED BY MR. HANNIGAN, THE MINUTES OF THE SEPTEMBER 5-6, 2002 TEXAS BOARD OF HEALTH MEETING WERE APPROVED WITH THE CORRECTION ON PAGE 12 TO RECORD THAT MS. SCHOLIN WAS IN ATTENDANCE.

A resolution was presented in recognition of the retirement of Linda Linville, R.N., M.S.N, Bureau Chief for Immunization and Pharmacy Support, after 34 years of dedicated service. (*Attachment I*)

A resolution was presented in recognition of November 2002 as National Epilepsy Month. (*Attachment II*)

A resolution was presented in recognition of November 2002 as Alzheimer's Disease Awareness Month. (*Attachment III*)

Dr. Sanchez spoke regarding recent activities as Commissioner and presented the Commissioner's Report. Dr. Sanchez recognized the Texas Department of Health Hepatitis C Initiative for receiving a Vision Award at the Association of State and Territorial Health Officials meeting (ASTHO) held in Nashville, Tennessee, the first week of September 2002. (*Attachments IV-V*)

I. Celine Hanson, M.D., Chief, Bureau of HIV and STD Prevention, requested approval of proposed amendments to rules concerning client financial eligibility requirements for the Texas HIV Medication Program. The rules ensure the program continues to operate within budget parameters to provide pharmaceutical assistance to low income clients living with HIV disease. (*Attachment VI*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED THE PROPOSED RULES CONCERNING THE TEXAS HIV MEDICATION PROGRAM FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Mr. McCleskey called for discussion and recognized persons to give public comment.

Ms. Carolyn Parker, Texas AIDS Network, spoke against the proposed client financial eligibility requirement rule change. She stated the department has done everything they can do to find solutions, but there are not enough resources.

Mr. Skip Rosenthal, International AIDS Empowerment, El Paso, Texas, spoke against the proposed client financial eligibility requirement rule change and requested the department delay action until after the legislative session. Mr. Rosenthal is the Director of Coalition of People Living with AIDS and serves as a consumer member on the department's HIV Advisory Board.

Mr. Sandy Bartlett, Education Coordinator for AIDS Services of Austin, spoke against the proposed client financial eligibility requirement rule change and requested that action on this rule be postponed until the upcoming legislative session.

Mr. Tracy Wilson, Houston Metropolitan Title One Planning Council, Harris County Hospital District's Thomas Street Clinic, spoke against the proposed client financial eligibility requirement rule change. He stated the result of this rule change would be a financial burden on Medicaid, counties and taxpayers.

Mr. Paul J. Mayfield, Statewide Coordinator for AIDS Coalition of Texas Now, ACT Now, spoke against the proposed client financial eligibility requirement rule change. He stated his coalition would be contacting all legislators to request \$34 million for this program.

Mr. Carlos Hernandez, ACT Now, spoke against the proposed client financial eligibility requirement rule change.

Mr. Ray Moore, ACT Now, spoke against the proposed client financial eligibility requirement rule change. Mr. Moore is a member of several organizations including the North Central Texas Planning Prevention Group and serves as a volunteer assisting AIDS patients.

Mr. Larry Diaz, ACT Now, spoke against the proposed client financial eligibility requirement rule change and asked this agenda item be tabled until after the legislative session. Mr. Diaz also serves on the San Antonio Title One EMA Planning Council.

Linda M. Altenhoff, D.D.S., Director, Texas Health Steps and Medical Transportation Division, requested approval, subject to the approval of the State Medicaid Director, of the proposed rules concerning the Medical Transportation Program. (*Attachment VII*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. KHAN, THE BOARD APPROVED THE PROPOSED RULES, SUBJECT TO THE APPROVAL OF THE STATE MEDICAID DIRECTOR, CONCERNING THE MEDICAL TRANSPORTATION PROGRAM FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Peggy Belcher, Office of Health Information and Analysis, requested approval of a proposed amendment to a rule concerning the distribution of tobacco settlement proceeds to political subdivisions. (*Attachment VIII*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. KHAN, THE BOARD APPROVED THE PROPOSED RULE CONCERNING THE DISTRIBUTION OF TOBACCO SETTLEMENT PROCEEDS TO POLITICAL SUBDIVISIONS FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Julie Ann Long, Nurse Specialist, Health Facility Licensing and Compliance Division, requested approval of amendments to proposed rules concerning the regulation of birthing centers. (*Attachment IX*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. KHAN, THE BOARD APPROVED THE PROPOSED RULES CONCERNING REGULATION OF BIRTHING CENTERS FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Mr. Kirk Wiles, Director, Seafood Safety Division, Bureau of Food and Drug Safety, requested approval of the proposed repeal and new rules concerning Texas crabmeat. (*Attachment X*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. KHAN, THE BOARD APPROVED THE PROPOSED RULES CONCERNING TEXAS CRABMEAT FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Mr. Kirk Wiles, Director, Seafood Safety Division, Bureau of Food and Drug Safety, requested approval of the proposed repeal and new rules concerning Molluscan Shellfish.
(Attachment XI)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED THE PROPOSED REPEAL AND NEW RULES CONCERNING MOLLUSCAN SHELLFISH FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Jacquelyn McDonald, Director, Office of the Board of Health, requested approval of a proposed amendment to the rule concerning the Kidney Health Care Advisory Committee. The committee has been reviewed and evaluated and it has been determined that the committee should continue in existence until March 1, 2008.
(Attachment XII)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. KHAN, THE BOARD APPROVED THE PROPOSED RULE CONCERNING THE KIDNEY HEALTH CARE ADVISORY COMMITTEE FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Jacquelyn McDonald, Director, Office of the Board of Health, requested approval of a proposed amendment to the rule concerning the Texas HIV Medication Advisory Committee. The committee has been reviewed and evaluated and it has been determined that the committee should continue in existence until March 1, 2008.
(Attachment XIII)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED THE PROPOSED RULE CONCERNING THE TEXAS HIV MEDICATION ADVISORY COMMITTEE FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Mr. McCleskey called for discussion and recognized persons to give public comment.

Ms. Carolyn Parker, Texas AIDS Network, spoke in favor of continuing the Texas HIV Medication Advisory Committee. She stated the committee needs a more diverse consumer representation and the addition of representation of caregivers.

Mr. Tracy Wilson, from Houston, spoke in favor of continuing the Texas HIV Medication Advisory Committee. He stated the committee needs to have consumer representation from Houston and San Antonio and/or form an ad hoc committee of consumers for more consumer representation.

A discussion followed among Board members, Dr. Hanson and Ms. McDonald regarding the diversity of representation on the Texas HIV Medication Advisory Committee.

Ms. Jacquelyn McDonald, Director, Office of the Board of Health, requested approval of a proposed repeal of the rule concerning the Scientific Advisory Committee on Birth Defects in Texas. The committee has been reviewed and evaluated and it has been determined that the committee should be abolished. (*Attachment XIV*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED THE PROPOSED REPEAL OF THE RULE CONCERNING THE SCIENTIFIC ADVISORY COMMITTEE ON BIRTH DEFECTS IN TEXAS FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Mr. McCleskey announced a recess at 10:40 a.m., on Friday, October 18, 2002.

Mr. McCleskey reconvened the meeting at 10:57 a.m., on Friday, October 18, 2002. Other Board members in attendance were Mr. Raymond Hannigan, , Dr. Amanullah Khan and Ms. Margo Scholin.

Mr. Ron Hilliard, Manager, Bioterrorism Hospital Preparedness Program, Office of the State Epidemiologist, requested approval of a proposed new rule concerning the establishment of the Preparedness Coordinating Council. The rule covers the establishment, structure, and composition of a preparedness coordinating council that would provide advice, assistance and coordination to prepare the State of Texas for bioterrorism attacks, other infectious disease outbreaks, and additional public health threats and emergencies. (*Attachment XV*)

A discussion followed among Board members, Dr. Bell, Ms. Steeg and Mr. Hilliard regarding the diversity of representation from organizations on the Preparedness Coordinating Council and the balance of consumers versus non-consumers.

ON A MOTION MADE BY DR. KHAN AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED THE PROPOSED RULE CONCERNING THE PREPAREDNESS COORDINATING COUNCIL FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ernest H. "Skip" Oertli, D.V.M., Chief, Bureau of Epidemiology, requested approval of final adoption of new rules concerning reporting to the cancer registry for the recognition, prevention, cure or control of cancer. (*Attachment XVI*)

ON A MOTION MADE BY DR. KHAN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING CANCER REPORTING TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Sherry Clay, Director, Quality and Customer Services Division, Bureau of Laboratories, requested approval of final adoption of rules concerning laboratory services and fees. These rules will increase the number of tests that will be provided on a fee for service basis. (*Attachment XVII*)

ON A MOTION MADE BY DR. KHAN AND SECONDED BY MS. SCHOLIN, THE BOARD

APPROVED AN ORDER ADOPTING RULES CONCERNING LABORATORY SERVICES AND FEES TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Susan K. Steeg, General Counsel, requested to repeal the rule concerning pharmacy services, which were part of the Vendor Drug Program. Due to the transfer of Medicaid rules from the department to the commission, this section is no longer required as a department rule. (*Attachment XVIII*)

ON A MOTION MADE BY DR. KHAN AND SECONDED BY MR. MCCLESKEY, THE BOARD APPROVED AN ORDER ADOPTING REPEAL OF THE RULE CONCERNING PHARMACY SERVICES TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Susan K. Steeg, General Counsel, requested to repeal the rules concerning purchased health services. Due to the transfer of Medicaid rules from the department to the commission, this section is no longer required as a department rule. (*Attachment XIX*)

ON A MOTION MADE BY DR. KHAN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED AN ORDER ADOPTING REPEAL OF THE RULES CONCERNING PURCHASED HEALTH SERVICES TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Mr. Michael G. Young, Assistant General Counsel, requested final adoption of repeal of a rule concerning block grant hearing procedures. The department has reviewed the section and has determined that reasons for its adoption no longer continue to exist. (*Attachment XX*)

ON A MOTION MADE BY DR. KHAN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED AN ORDER ADOPTING REPEAL OF THE RULE CONCERNING BLOCK GRANT HEARING PROCEDURES TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Patricia Reedy, Public Information Coordinator, Office of General Counsel, requested final adoption of a rule concerning procedures for handling requests for public information by informing individuals of the proper procedures for reviewing a request, accommodating the requested format, and meeting deadlines. (*Attachment XXI*)

ON A MOTION MADE BY DR. KHAN AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING PROCEDURES FOR HANDLING REQUESTS FOR PUBLIC INFORMATION TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Mary Ann Slavin, Assistant General Counsel, requested approval of a final rule concerning the procurement of professional services. The department procures professional services as needed to fulfill operational requirements. (*Attachment XXII*)

ON A MOTION MADE BY DR. KHAN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED AN ORDER ADOPTING THE RULE CONCERNING PROCUREMENT OF PROFESSIONAL SERVICES TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Sarah Richardson, Legal Assistant, requested to repeal sections of rules concerning: (1) the use of departmental facilities by public-related organizations and public health employees; and (2) proof of payment of corporate franchise taxes by department contractors and licensees. (*Attachment XXIII*)

ON A MOTION MADE BY DR. KHAN AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING REPEAL OF RULES CONCERNING USE OF DEPARTMENTAL FACILITIES AND PAYMENT OF CORPORATE FRANCHISE TAXES TO BE

EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Elaine Snow, Assistant General Counsel, requested to repeal the rules concerning federal laws and regulations governing Texas public health services. The repeal of these rules eliminates obsolete provisions and avoids redundancy in the department rules. (*Attachment XXIV*)

ON A MOTION MADE BY DR. KHAN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED AN ORDER ADOPTING THE REPEAL OF RULES CONCERNING FEDERAL LAWS AND REGULATIONS GOVENRING TEXAS PUBLIC HEALTH SERVICES TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Mr. Jim Arnold, Assistant Bureau Chief, Bureau of Emergency Management, requested final adoption of a repeal and new rule concerning the process of obtaining and renewing licensure of paramedics for emergency medical services personnel. (*Attachment XXV*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. KHAN, THE BOARD APPROVED AN ORDER ADOPTING THE RULES CONCERNING THE LICENSURE OF PARAMEDICS FOR EMERGENCY MEDICAL SERVICES PERSONNEL TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Lee C. Jan, D.V.M., Director, Meat Safety Assurance Division, Bureau of Food and Drug Safety, requested final adoption of amendments to rules concerning meat and poultry inspection. (*Attachment XXVI*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. KHAN, THE BOARD

APPROVED AN ORDER ADOPTING RULES CONCERNING MEAT AND POULTRY INSPECTION TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Jacquelyn McDonald, Director, Office of Board of Health, stated proposed rules regarding the Children With Special Health Care Needs (CSHCN) Program, including the CSHCN Advisory Committee, were approved for publication in the *Texas Register* for 60 days at the September 5, 2002 Board of Health meeting. Ms. McDonald requested that the CSHCN Advisory Committee be continued until the effective date of the adoption of the CSHCN rules. (*Attachment XXVII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED TO THE CONTINUANCE OF THE CSHCN ADVISORY COMMITTEE, INCLUDING MEMBERSHIP, THROUGH THE EFFECTIVE DATE OF THE ADOPTION OF THE CSHCN RULES.

Mr. Mark Scott, Director, Internal Audit, presented information regarding the Internal Audit Act. Mr. Scott stated the annual report is due on November 1, 2002 and he will present the report at the November 21, 2002 Board meeting. (*Attachment XXVIII*)

Ms. Jayne Nussbaum, Director, Office of Governmental Relations, presented an overview of the Sunset Advisory Commission interim review of the Texas Department of Health. The Sunset staff anticipates finishing its review and publishing the report by November 15, 2002. The Sunset Commission will meet in a formal hearing to review the report and its recommendation on December 10 or December 11, 2002 and will meet again on January 15, 2003 to make final decisions regarding the staff recommendations. The final recommendations will be filed by one of the members of the Commission as legislation during the 78th Legislature. No Action was taken. (*Attachment XXIX*)

A discussion followed among Board members, Dr. Bell and Ms. Nussbaum regarding departmental issues from the last legislative session. Mr. McCleskey urged everyone to be in attendance at the December 10 or 11, 2002 formal hearing. Ms. Nussbaum will announce which date the hearing will be held and the final agenda as soon as it is available.

Ms. Jan W. Pelosi, Director, Immunization Division, requested approval of the acceptance of a

gift of \$25,000.00 offered by Merck and Company, Incorporated toward the 4th Immunize Texasize Conference to be held on November 19, 2002, in Austin, Texas, sponsored by the Immunization Division, Bureau of Immunization and Pharmacy Support. (*Attachment XXX*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED THE ACCEPTANCE OF A \$25,000.00 GIFT FROM MERCK AND COMPANY, INCORPORATED.

Ms. Machel Pharr, Chief Financial Officer, requested approval to carry forward from 2002 to 2003 unobligated balances in appropriations for Goal A: Prevention and Promotion as detailed in Attachment A pursuant to Texas Department of Health Rider 31, General Appropriations Act, 77th Legislature. (*Attachment XXXI*)

ON A MOTION MADE BY MR. HANNIGAN SECONDED BY MS. SCHOLIN, THE BOARD APPROVED TO CARRY FORWARD FROM 2002 TO 2003 UNOBLIGATED BALANCES IN APPROPRIATIONS FOR GOAL A: PREVENTION AND PROMOTION, AS DETAILED IN AMENDED ATTACHMENT A.

There were no public comments.

Mr. McCleskey announced the next meeting of the Texas Board of Health will be held on Thursday, November 21, 2002, in Austin.

The meeting was adjourned on Friday, October 18, 2002, at 11:37 a.m.

APPROVED: November 21, 2002

Mario R. Anzaldua, M.D., Chair
Texas Board of Health

Date

George H. McCleskey, Vice-Chair
Texas Board of Health

Date